

CITY OF DANBURY
155 DEER HILL AVENUE
DANBURY, CONNECTICUT 06810

ZONING BOARD OF APPEALS
(203) 797-4525
(203) 797-4586 (FAX)

DRAFT MINUTES – REGULAR MEETING
April 11, 2013
CITY COUNCIL CHAMBERS
7:00 PM

ROLL CALL: Chairman Richard S. Jowdy called the meeting to order at 7:01 pm. Present were Jowdy, Herbert Krate, Michael Sibbitt, Rodney Moore, New Alternate Anthony J. Rebeiro.

Absent was Alternate Rick Roos.

Staff present were Sean P. Hearty, Zoning Enforcement Officer, Secretary Patricia Lee. Jowdy opened the meeting to order at 7:01 pm.

NEW BUSINESS:

13-13 – SST Auto, Inc., 52 Miry Brook Road (F19049), USE Variance, Sec.6.A.2.a., to allow sales of automobiles in conjunction with and accessory to the existing automobile repair facility (IL-40 Zone). Negative recommendations rec'd. from Planning & Zoning Commissions. Chairman Jowdy introduced this petition explaining that we only have one application this evening. Moore made a motion to hear item #13-13. Hanna seconded the motion. The motion carried unanimously. Jowdy introduced the new ZBA alternate member, Anthony Rebeiro, as happy news, and read the appointment letter into the record, to replace Jack Villodas. Welcome. We look forward to working with you. Jowdy next read the negative recommendations from the Zoning Commission and the Planning Commissions. It would set a dangerous precedent in the City. The reason retail is not allowed in this zone is because the intent of IL-40 is to provide an area for expansion of the industrial base in the City. There already is much more being done on this site than what the site plan approval was granted for. Lastly, the applicant knew this was not a permitted use in this zone when he leased the property in 2010, so how can they claim a hardship now because they cannot sell cars. Attorney Thomas Beecher of Collins Hannafin, PC, took the mic, identified himself, and said with me tonight is Spencer Cox, the owner of the business. Beecher signed in. It is in the light industrial zone, across the street from the airport, and on the southeast side there's a vacant lot on the corner of Weindorf and Miry Brook. The negative recommendations from Planning and Zoning are not unexpected, Beecher said. They have not adopted the changes themselves. In fact, one of the reasons we are here, there are certain limited retail sale uses in this zone. One comment from the Planning Commission, Beecher said, that there is a whole lot more going on at that site than the regulations approve. And I don't know what that statement is based on, Beecher said. At night the cars are all brought inside. There are no current active violations on the site, Beecher said, and Hearty agreed. There will be no additional lighting. It's not a fancy dealer car lot. It would create no additional traffic. I would like to have Mr. Cox address you before I continue, Beecher said.

Spencer Cox identified himself, saying I opened up this business with some good friends and some good people. In the Dept. of Motor Vehicles, it's just a different rating. I work on mostly German cars, and there are a lot of Porsche car racers from Ridgefield, and I would like to offer services to them, Cox said. Customers say, Spencer, can you help me find a new Porsche. It would help me a lot. It would be an asset to my customers, and not cut

myself out of a little bit of profit as well. There will be no signage. If you've been by it, you see there is very nice landscaping; it's very tidy. I know; I understand the rules. I have 12 years before my lease is up; so it would not have signage, so it would not ruin the neighborhood. I play by the rules. I love the community, Cox continued. It will be a feeding pool: if someone asks me to purchase the car myself, and I will let the people do their horse trading. I'm growing. It's tough, Cox said. Jowdy said you were aware that this was not allowed in the zone. Cox replied it's just an added value to my customers and to my business. I don't want to change anything I'm doing now. Three or four people might ask me, in this season, can you help me find a fresh car. No, there would never be more than 10 cars, Cox and Jowdy agreed. And I am not trying to build that sort of a business. I have 14 employees now in my shop. I was on Triangle for about 4 or 5 months. Jowdy said he has a specialty operation; the limitation is very low as to the number of cars. Cox said it will basically facilitate a car sale one at a time. I am allowed to go to the auction, buy that car, and sell it to a customer. Krate asked how many spaces do you have in that building. Could you confine your sales to inside that building? If we can condition this, any for-sale car must be inside the building. Hearty said no outside storage is permitted anyway. Hearty said the cars are left out now. Cox said never more than 2 cars outside at night for safety reasons. How long has DeSherbinin been there, Krate asked; the lighting people? Cox said we fix her Audi; I did not know her name. Beecher said I have more presentation and returned to the microphone. As Mr. Cox explained, this is a specialty operation, mostly for German cars, so that this can be done at this site legally. We all know there are car sales done illegally all over the City. Mr. Cox is trying to do this within the rules, and it should be so conditioned, if this is granted, as only an accessory to a primary use on the property which is automobile repair. Our application states the conditions that can be stipulated if this is approved, Beecher continued. If the neighbors are concerned that this is going to mushroom some day, there will be no increase in traffic. Look at Sec. 6.C.3., limited retail sales at certain times of the year. Hotels and motels certainly have retail sales of food and drink. Even a repair shop has some limited parts sales. The hardship here is the prohibition on sales doesn't apply to all industrial zones. In this high end business, it is really a consignment type of sale, and he can be a middleman on the sale. This is a similar type of argument. It is a minimal variance request, and it will not impact the welfare, health and safety of the neighborhood. There will be no lighting. Moore said I was there today and the lot was basically full, and there were several cars outdoors. Cox said there really would be no room to expand even that, from the audience. No sales signage, Beecher said. Jowdy asked is there anyone who wishes to speak for or in opposition to this petition.

My name is Steve Froehlich, and I live at 10 Marc Road. I appreciate the opportunity to speak against this variance this evening. There are a number of issues that I am concerned about: it is a slippery slope granting this variance for other businesses in this area. Jowdy said that every application stands on its own. Steve Froehlich asked what would be particular to this request? Jowdy and Steve Froehlich discussed each petition. Froehlich said any subsequent tenant would be allowed to do retail sales there as well. Jowdy said, if he sells it, yes, the variance goes with the property. Froehlich said so, again, let me reiterate that he leased this property knowing full well that sales were not allowed on this property. Is he going to be back in a few years to ask for more expansion of his business? Kate said we could limit where those cars are kept, which is why I asked about doing the operation indoors. There are cars out there now, and it has been closed for several hours, Steve Froehlich said. Froehlich said I understand that he was not supposed to do overnight parking or retail sales. My point is that by his own admission, he was not to have any overnight parking. Froehlich said there have been cars parked there overnight; it was my understanding that that is not allowed. I am concerned with the expansion with other businesses in the neighborhood. Krate said everything stands on its own; each case stands on its own merit. Moore asked, I'm curious about this: it's hard to identify who's who

parked there; have you observed that the cars there are Porsches? I do not have a Porsche, Froehlich said. It does not bother me necessarily, but again I think it's a slippery slope, and that's what my fear is. Krate asked of Hearty is a campus an allowed use in the IL-40 zone? Krate said, referring to the allowed uses in this zone that would be a more intense use; I don't know at this point; I'm not for or against it. It's very interesting that those things are there, and he discussed banking with Hearty. This is the first repair shop that has come in to ask permission to sell cars; they usually just sell cars. This is unusual and this is not an intense use of it. A limited use is not all that intense a use of that facility, Krate continued, particularly if he can keep everything indoors. Steve Froehlich and Krate discussed the landscape company that is nearby that is also doing retail sales. Froehlich concluded I am objecting to the expansion, and Froehlich sat down.

Jowdy and Moore discussed the e-mail from neighbor Diane Sanders to Ben Chianese on 4/10/13 with questions about the application. Just so we're covered, Hearty said. Beecher came back to the mic, and said her concerns are not going to come to fruition. I do not want to belabor the issue of storage, but we've all seen junk cars on repair lots that sit there and sit there, more than just on a temporary basis. Next door is a tractor trailer company, Pepperidge Farm, and chemicals for landscaping, Apgar Fertilizer. Cox said there are busses in there. Hearty said it's light industrial there. Cox said I pull them in at night mostly because of vandalism. Krate said technically every repair shop should pull their cars in at night. Moore asked again to hear about the hardship. This particular use, at this particular location, Beecher said, does not get the same protection as other types of uses in the zone, so it's the application of the zoning regulations that creates the hardship. Beecher said I am not sure where Marc Road is, regarding the gentleman that spoke in opposition. Steve Froehlich came back to the mic and said the argument is what is going on on other properties. Jowdy and Krate replied no. Moore made a motion to close the public hearing. Hanna seconded the motion. Motion carried unanimously at 7:45 pm.

Jowdy said we can now go right into the voting session, and he described the issues before the commissioners for this petition. Moore said I have a question for Sean (Hearty): if we were to approve this with stipulations, how hard would it be to enforce them? Hearty said we don't go out to locations at night. Any stipulation you put on the variance, you will have to use your head; enforcement will happen. But the applicant also has to have the intention of complying with the condition. Hearty said the last number they stated was five. They said they would go from 10 to 5, unless you want to correct me, Hearty said. No more discussion, Jowdy said, at 7:49 pm. It's up to the board.

Krate said I have one big problem with the hardship: we are not permitted to grant a variance for a financial hardship, and that's something we are not permitted to do. Jowdy said that the enforcement of the regulations may sometimes create its own hardship, and I believe that's what the attorney said. Krate said to the applicant you can no longer speak. Krate said these are omission regulations. Hearty said we have permissive zoning regulations. Krate remarked same thing, different explanation; I have a lot of difficulty with additional revenue as a hardship. Moore said what is stated in the application is the hardship. Krate said I'm really on the fence; I see both sides of the issue. Jowdy asked anyone want to add to Mr. Krate's comments?

Moore made a motion to **approve #13-13**, a USE Variance, Sec.6.A.2.a., to allow sales of automobiles in conjunction with and accessory to the existing automobile repair facility in the IL-40 Zone. I ask specifically about the hardship: some retail uses are allowed and some are not, Moore continued. The stipulations would be no signage, and they're limited to 5 cars for sale at any time, either outside or inside, Moore said. It's in character with the neighborhood, and there are no concerns for welfare, health, and character of the community. Hanna seconded the motion. Krate said can I talk to Joe technically? I would like to see all sales to be done indoors only, and Krate elaborated. Krate made a motion to amend the motion with **stipulations**. The stipulations are that no more than 5 vehicles may be offered for sale at the premises at any given time; any for-sale automobile must be

stored inside the building; and no signs shall be erected related to automobile sales. Hanna, Moore, Rebeiro seconded the motion with the amendment. Sibbitt voted nay. Jowdy said there are four positive and one negative (Sibbitt) vote. The motion carries, Jowdy said. Motion to close the public hearing by Hanna. Second by Sibbitt. Motion carried unanimously.

13-14 – WITHDRAWN - Brian A. Reeves, 82 Mill Plain Road (D14004), Sec.8.E.3.a.(3)., to permit two free-standing signs on existing lot width 251 feet of frontage; to reduce separation of two signs on one lot from 300 ft. to 52 ft.; Sec. 8.E.5.a., to allow new freestanding sign in required side yard (CA-80 Zone).

NOTE: THE NEXT REGULAR MEETING IS SCHEDULED FOR **April 25, 2013.**

ACCEPTANCE OF MINUTES: 1/10/13 Meeting and 3/14/13 Meeting. Commissioners decided they cannot approve the 1/10/13 minutes. Motion to approve the March 14, 2013, minutes as presented by Krate. Sibbitt seconded the motion. Motion carried unanimously.

ADJOURNMENT: Moore made a motion to adjourn. Hanna seconded the motion. Motion carried unanimously at 7:59 pm.